J.R. Simplot Company
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December 9, 2019

SENT VIA EMAIL TO: peak.nicholas@epa.gov
ORIGINAL TO FOLLOW VIA CERTIFIED MAIL #7018 0400 0000 3245 6918
RETURN RECEIPT REQUESTED

U.S. EPA Region 10
Attn: Director, Water Division
1200 Sixth Avenue, Suite 155 (19-C04)
Seattle, Washington, 98101
Attn: Nicholas Peak

RE: The J.R. Simplot Company Comments on Proposed Reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) in Idaho

The J.R. Simplot Company (Simplot) submits these comments in response to the Water Division's U.S. Environmental Protection Agency's Region X (EPA or Agency) Notice on Proposed Reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) in Idaho, published in the *Federal Register* on October 23, 2019 and appearing at Federal Register Volume 84 Number 205. Simplot is a privately held agribusiness corporation based in Boise, Idaho. The corporation is engaged in a number of businesses including food processing, farming, fertilizer manufacturing, mining, ranching and other enterprises related to agriculture. Simplot operates CAFOs in the Northwest and has extensive knowledge and expertise in such operations especially related to the practicability of implementing regulatory requirements.

General Comments

As indicated in the EPA draft 2019 NPDES General Permit for CAFOs in Idaho Fact Sheet, EPA has authorized Idaho Department of Environmental Quality (IDEQ) to implement a NPDES permit program and IDEQ will obtain permitting authority for general NPDES permits on July 1, 2020. Based on the rapidly approaching transition schedule of these permits from EPA to IDEQ authority, the proposed reissuance of the NPDES General Permit for CAFOs in Idaho should be delayed until after the transition is completed. In addition, the NPDES General Permit for CAFOs in Idaho should be drafted by IDEQ.

In general, this draft 2019 permit has numerous requirements that are more detailed compared to the 2012 NPDES General Permit for CAFOs in Idaho. These more rigorous requirements are overly burdensome in they require a high level of technical knowledge to implement, have a high cost of compliance, and will be time-consuming to implement. These requirements are going to be difficult for a large operation to implement and likely not possible for small operations. We recommend that EPA consider the effect this permit will have on the economic viability of CAFO operations.

In the permit there are numerous requirements to comply with specific standards or specific guidance documents. If alternative methods are available that achieve compliance with the permit, these alternative methods should be allowed. The permit should not dictate the methods, but rather the required results.

Also, in Idaho, the State Department of Agriculture (ISDA) has historically had a role in regulating CAFOs. Simplot believes that it would be beneficial for the regulated community to understand which of these agencies will be designated as the lead agency and the roles each will have in permit implementation: ISDA, IDEQ, and EPA.

Permit Comments

I. B. Permit Area and Coverage – Application for Coverage

With respect to Item 4, there is no requirement for EPA to make a timely determination on completeness of a Notice of Intent (NOI) and Nutrient Management Plan (NMP). Simplot recommends EPA have 30 days to determine if an NOI and NMP are complete.

Item 5 states "In order to determine if an expansion is a new source, the applicant must submit to EPA information describing the expansion and a map showing the location of the expansion. If EPA determines the expansion meets the new source definition, the owner/operator must prepare and submit an EID or draft EA as described above." Simplot comments that the facility be responsible for making this determination. This would not eliminate the facility's responsibility to comply with NEPA requirements for expansions or eliminate EPA's authority to enforce against the facility if they made an improper determination. It would simply streamline the process. If these determinations are going to be made by EPA, it is likely to delay projects and affect the economic viability of the facility. If EPA is going to make the determination, then Simplot recommends that there needs to be a requirement for EPA to make the determination within 30 days. A delay beyond 30 days would likely be very costly to the facility and require coordination for the long term raising of cattle at an alternative CAFO location, which may be of considerable distance from the facility.

II.A. Effluent Limitations and Standards – Effluent Limitations and Standards Applicable to the Production Area

Sections 1.a. and 1.b. appear to be the same requirement but just stated in different terms. Simplot recommends eliminating 1.b.i. – vii and keeping Section 1.a. as is, with the exception of specifying a 120 day storage period for manure, litter, and process wastewater, as is currently required for wastewater storage in Idaho, rather than the 180 day storage period listed in the draft 2019 NPDES General Permit for CAFOs in Idaho, so this section becomes:

> A. Effluent Limitations and Standards Applicable to the Production Area
>
> Except as provided in Section II.A.3., there must be no discharge of manure, litter, or process wastewater into wasters of the United States form the production area except as provided below.

1. Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:

a. The production area is designed, constructed, operated, and maintained to contain all manure, litter, process wastewater, and the runoff and direct precipitation from the 25-year, 24-hour storm event for the location of the CAFO for a storage period of 120 days.

Section 2.a.ii. requires daily visual inspections of all water lines, including drinking water and cooling water lines. Simplot recommends EPA clarify if daily visual inspections apply to aboveground water lines or underground water lines, or both. With regards to frequency of visual water line inspections, Simplot recommends it be revised to weekly rather than daily inspections, as weekly inspections should be sufficient.

II.B. Effluent Limitations and Standards – Effluent Limitations and Standards Applicable to the Land Application Area

Section 2. uses the phrase "to achieve realistic production goals" with respect to the application of nutrients in the NMP. This is a vague term that adds no value to the statement. Simplot recommends changing it to the following: "The NMP must address the form, source, amount, timing, and method of application of nutrients on each field, while minimizing nitrogen and phosphorus movement to surface waters."

III.A. Special Conditions – Nutrient Management Plan (NMP)

There is no timeline requirement for the EPA to review and determine completeness of the NMP in Permit Condition 1. We recommend adding a requirement for EPA to make the determination within 30 days of receipt of the NMP.

The Idaho Animal Waste Management (IDAWM) Software mentioned in Permit Condition 2.a.i. and the Washington NRCS Engineering Technical Note #23 listed in Permit Condition 2.a.ii. appear to be developed for wastewater storage and wet manure. Dry or composted manure are common to all CAFOs. Simplot recommends EPA clarify if dry or composted manure are required to be evaluated using IDAWM Software and Washington NRCS Engineering Technical Note #23. In addition, Simplot recommends EPA clarify if these calculation methods may be utilized for dry or composted manure.

With regards to Permit Condition 2.b., the handling of mortalities does not affect nutrient management and therefore should not be in the NMP. The 2019 NPDES General Permit for CAFOs in Idaho should not prescribe how mortalities are handled other than they need to be handled so as to not contaminate surface water. If this requirement remains for the NMP, Simplot recommends changing Permit Condition 2.b. to the following: "Mortalities shall be handled in such a way as to prevent the discharge of pollutants to waters of the United States."
Permit Condition 2.c. requires clean water be diverted from the production area or requires the facility provide adequate wastewater or manure storage capacity at the facility to contain clean water. It is difficult and costly to divert run on water from adjacent properties.

As an example, at the Simplot operation near Grand View, Idaho, the topography north and east of the facility consists of steep rising terrain to a desert plain above the Snake River. The land bordering the Simplot operation is owned by the federal government and is managed by the U.S. Bureau of Land Management (BLM). This plain reaches elevations above 2,900 feet and drains to the Snake River valley below through a series of "draws". Building diversion structures to totally divert this water is not appropriate or feasible. In fact, to do so would require a number of such structures to be built on federal lands. If such structures were allowed by rules, such a project would go through a number of regulatory processes such as the National Environmental Policy Act (NEPA). Thus, this would be a very cumbersome process with an uncertain outcome.

It is also not feasible to contain run on water at Simplot's Grand View property due to the enormous volume of run on water from thousands of acres of BLM land up-gradient of the facility. Therefore, Simplot recommends Permit Condition 2.c. be removed from the draft 2019 NPDES General Permit for CAFOs in Idaho.

Permit Condition 2.f. requires CAFOs to perform a risk assessment and rate every land application area field for the NMP. The requirement to perform assessments for every field would be overly burdensome in that they would be very expensive and labor intensive. Simplot recommends this Permit Condition 2.f. be removed from the draft 2019 NPDES General Permit for CAFOs in Idaho.

For Permit Condition 2.h., it requires "annual nutrient budgets must be generated to determine land application rates for each field where manure, litter, or process wastewater is applied". Most facilities have the data to calculate nutrient budgets, just not a good system to compile all of the data into one report. It would be costly and time consuming to gather the data for annual nutrient budgets. Simplot recommends the requirement for annual nutrient budgets in Permit Condition 2.h. be removed from the draft 2019 NPDES General Permit for CAFOs in Idaho.

III.A. Special Conditions – Nutrient Management Plan – Changes to the NMP

Section 5.b. lists four items that EPA considers substantial changes, but does not limit it to only these changes. Simplot recommends defining all changes that are considered to be substantial in the permit rather than leaving it vague, so that compliance can be determined from the face of the permit.

Farmers are continually changing crop rotations, adding new ground, trying different rates and methods of application. A facility's NMP could be under constant EPA review or the facility could easily be out of compliance for adding a new crop or adding new land application ground to his operation prior to obtaining Agency approval. Simplot recommends adding flexibility to the criteria defining a substantial NMP change or allow for expedited Agency review in Section 5.b., to account for these types of changes.

III.B. Lagoon Liner Requirements

A 30 day time frame to have a damaged lagoon liner inspected by a Professional Engineer and also repaired is unreasonable. Simplot recommends a 90 day time frame to complete an inspection and repair of a damaged lagoon liner, with longer time frames considered due to other factors such as time of year (i.e. repairs may not be feasible in winter if a lagoon is full).

IV.A. Records, Reporting, Monitoring, and Notification – Records Management

These permit conditions list recordkeeping requirements for the production area and land application area in paragraph format. Since the recordkeeping requirements are complex with many types of parameters recorded at various frequencies, Simplot recommends the recordkeeping requirements be re-formatted into a table to make them easier to track and maintain compliance (see attached table format as an example from section IV.A. of the 2012 NPDES General Permit for CAFOs in Idaho).

IV.B. Records, Reporting, Monitoring, and Notification – Annual Reporting Requirements

Many of the reporting requirements for the Annual Report is currently protected in Idaho and considered confidential business information. Simplot recommends not submitting information to Agencies in an Annual Report, but maintaining the confidential information on site, which Agencies can review on site.

VI. Definition of "Waters of the United States"

On October 22, 2019, the EPA and Department of the Army published a final rule to repeal the 2015 Clean Water Rule and re-codify it to a pre-existing definition of "waters of the United States". This rule will be effective December 23, 2019. In addition, the EPA and Department of the Army proposed a revised definition of "waters of the United States" on December 11, 2018. Since the definition of "waters of the United States" is in transition, Simplot recommends removing the definition in total and replacing it with a definition to simply reference 40 CFR Part 122.2 (Waters of the United States means waters as defined in 40 CFR Part 122.2).

Simplot appreciates the opportunity to comment on this very important issue. Please contact me at (208) 780-7426 or Alan Prouty at (208) 780-7365 if you have any questions about these comments.

Sincerely,

Rachel Roskelley
Senior Environmental Programs Manager

Attachments

NPDES General Permit for CAFOs in Idaho, Section IV.A., US EPA Region X, May 9, 2012

Cc: Alan Prouty, J.R. Simplot Company
Tom Perry, J. R. Simplot Company

Attachments

NPDES General Permit for CAFOs in Idaho, Section IV.A., US EPA Region X, May 9, 2012

3. Spills: Appropriate measures necessary to prevent spills and to cleanup spills of any toxic, hazardous, or other pollutants shall be taken. Procedures for materials handling, storage, and the cleaning up of spills must be specified in the NMP and the necessary equipment to implement clean up shall be made available to facility personnel. All spills and clean-up activities must be documented and all documentation of spills and clean-up must be kept with the NMP.

4. Employee Training: Employees responsible for permit compliance must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Training shall include topics such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record-keeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the NMP shall identify dates for such training.

IV. INSPECTION, MONITORING, RECORDKEEPING, AND REPORTING

A. Inspection, Monitoring, and Recordkeeping

The permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table IV–A:

Table IV-A NPDES CAFO Permit Record Keeping Requirements

Parameter	Units	Frequency
Permit and NMP ***(Note: Required by the NPDES CAFO Regulation – applicable to all CAFOs)***		
The CAFO must maintain on-site a copy of the current NPDES permit, including the permit authorization notice.	N/A	Maintain at all times
The CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, land application, and all other minimum practices described in 40 CFR 122.42(e).	N/A	Maintain at all times
Soil and Manure/Wastewater Nutrient Analysis ***(Note: Required by the CAFO ELG – applicable to Large CAFOs)***		
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content.[1]	ppm Pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine nitrogen and phosphorus content.[1]	ppm	At least annually after initial sampling

Table IV-A NPDES CAFO Permit Record Keeping Requirements		
Parameter	**Units**	**Frequency**
Operation and Maintenance ***(Note: Required by the CAFO ELG – applicable to Large CAFOs)***		
Visual inspection of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to wastewater and manure storage and containment structures.	N/A	Weekly
Visual inspection of all water lines	N/A	Daily[2]
Visual inspection of manure, litter, and process wastewater impoundments, including documentation of depth of manure and process wastewater in all liquid impoundments	Feet	Weekly
Documentation of all corrective actions taken. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.	N/A	As necessary
Documentation of animal mortality handling practices	N/A	As necessary
Design documentation for all manure, litter, and wastewater storage structures including the following information:		
• Volume for solids accumulation	Cubic yards/gallons	Once in the permit term unless revised
• Design treatment volume	Cubic yards/gallons	
• Total design storage volume[3]	Cubic yards/gallons	
• Days of storage capacity	Days	
Documentation of all overflows from all manure and wastewater storage structures including: ***(Note: Required by the NPDES Regulation – applicable to all CAFOs)***		
• Date and time of overflow	Month/day/year	Per event
• Estimated volume of overflow	Total gallons	Per event
• Analysis of overflow (as required by the Permitting Authority)	ppm	Per event
Land Application ***(Note: Required by the CAFO ELG – applicable to Large CAFOs)***		
For each application event where manure, litter, or process wastewater is applied, documentation of the following by field:		
• Date of application	Month/day/year	Daily
• Method of application	N/A	Daily
• Weather conditions at the time of application and for 24 hours prior to and following application	N/A	Daily
• Total amount of nitrogen and phosphorus applied[4]	Pounds/acre	Daily
Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Documentation of the actual crop planted and actual yield for each field		
Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil.	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied.	N/A	Once in the permit term unless revised

Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Documentation of manure application equipment inspection	N/A	Seasonally
Manure Transfer ***(Note: Required by the NPDES CAFO Regulation – applicable to Large CAFOs)***		
For all manure transfers the CAFO must maintain the following records:		
• Date of transfer	N/A	As necessary
• Name and address of recipient	N/A	As necessary
• Approximate amount of manure, litter, or wastewater transferred	Tons/gallons	As necessary

[1] Refer to the state nutrient management technical standard for the specific analyses to be used.
[2] Visual inspections should take place daily during the course of normal operations. The completion of such inspection should be documented in a manner appropriate to the operation. Some operations may wish to maintain a daily log. Other operations may choose to make a weekly entry, when they update other weekly records that required daily inspections have been completed.
[3] Total design volume includes normal precipitation less evaporation on the surface of the structure for the storage period, normal runoff from the production area for the storage period, 25-year, 24-hour precipitation on the surface of the structure, 25-year, 24-hour runoff from the production area, and residual solids.
[4] Including quantity/volume of manure, litter, or process wastewater applied and the basis for the rate of phosphorus application.

B. Notification of Unauthorized Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application

1. If, for any reason, there is an unauthorized discharge of pollutants to a water of the United States, the permittee is required to make immediate oral notification within 24-hours to the EPA Region 10, NPDES Compliance Unit, Office of Compliance and Enforcement, Seattle, WA at 206-553-1846 and notify ISDA, the appropriate DEQ regional office, and the appropriate county authorities in writing, within five (5) working days of the discharge of pollutants to a water of the United States from the facility. In addition, the permittee shall keep a copy of the notification submitted to the EPA and ISDA together with the other records required by this permit. The discharge notification shall include the following information:

   a. A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged; and

   b. The period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge.